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10 *Attorneys for Plaintiff, HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp.*
11 *Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity*
12 *Loan Trust, Series 2006-ASAP5, Asset Backed Pass-Through Certificates*

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 HSBC BANK USA, N.A., AS TRUSTEE ON
16 BEHALF OF ACE SECURITIES CORP.
17 HOME EQUITY LOAN TRUST AND FOR
18 THE REGISTERED HOLDERS OF ACE
19 SECURITIES CORP. HOME EQUITY LOAN
20 TRUST, SERIES 2006-ASAP5, ASSET
21 BACKED PASS-THROUGH
22 CERTIFICATES,

23 Plaintiff,

24 vs.

25 BENJAMIN DONEL; MICHAEL
26 ESLAMBOLI; SUNDANCE
27 HOMEOWNERS ASSOCIATION, INC.,

28 Defendants.

Case No.: 2:17-cv-01144-RFB-VCF

**STIPULATION AND ORDER TO
DISMISS WITH PREJUDICE**

IT IS HEREBY STIPULATED between Plaintiff, HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP5, Asset Backed Pass-Through Certificates ("HSBC"), by and through its attorney of record, Bradley T. Wibicki, Esq. and Yanxiong Li, Esq.; Defendant, Benjamin Donel ("Mr. Donel"), in Proper Person; Defendant, Michael Eslamboli ("Mr. Eslamboli," collectively with Mr. Donel, hereinafter as

“Buyers”), in Proper Person; and Defendant, Sundance Homeowners Association, Inc. (“HOA”), by and through its attorney of record, David T. Ochoa, Esq. as follows:

WHEREAS:

1. The real property which is the subject of this case is commonly known as 1444 Santa Anita Drive Unit B, Las Vegas, Nevada 89119; APN 162-23-315-106 (“Property”) and is part of the common interest development governed by Rainbow Bend Homeowners Association (“HOA”);

2. HSBC is the holder of a first Deed of Trust securing a loan in the amount of \$138,400.00 made on or about May 23, 2006 (“Note”), by Octavio and Cristina Cervantes (collectively, “Borrower”) and recorded on May 31, 2006 in the Official Records of Clark County, Nevada as Book and Instrument Number 200605310005764 (“Deed of Trust”);

3. On July 5, 2013, a Notice of Delinquent Assessment was recorded by Alessi & Koenig, LLC (“Alessi”) on behalf of the HOA against the Property.

4. On November 7, 2014, a Notice of Default and Election to Sell was recorded by Alessi on behalf of the HOA, initiating the foreclosure process against the Property.

5. On March 16, 2015, a Notice of Sale was recorded, setting the foreclosure sale for April 15, 2015.

6. Pursuant to a Trustee’s Deed Upon Sale recorded on April 24, 2015 as Instrument Number 20150424-0002998, the Property was sold to Benjamin Donel and Michael Eslamboli on April 15, 2015 for \$34,000.00 (the “HOA Sale”).

7. No less than \$28,326.81 resulted from the HOA Sale as Excess Proceeds (“Excess Proceeds”).

8. HSBC filed its Complaint on April 25, 2017 commencing this action. [ECF No. 1].

9. On September 7, 2018, this Court entered a Minute Order requiring any dispositive motions filed within 30 days. [ECF No. 45]

10. On September 11, 2018, HSBC filed a Motion for Clarification, alternatively, to Reopen Remaining Discovery Period. [ECF No. 46-47]

1 11. On October 5, 2018, HSBC filed its Motions for Summary Judgment based on
2 Ninth Circuit's decision in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154
3 (9th Cir. 2016), *cert. den.*, 137 S. Ct. 2296 (June 26, 2017) [ECF No. 50], and alternatively, on
4 HOA's violation of NRS 116 et seq. notice requirements [ECF No. 48] (collectively as "HSBC
5 MSJs"). HSBC supplemented its MSJs with an Errata filed on October 12, 2018 [ECF No. 51]
6 enclosing deposition transcript of corporate designee for Alessi & Koenig, LLC.

7 12. HOA filed its Responses to HSBC MSJs on October 25, 2018 and October 29,
8 2018, respectively. [ECF No. 56-57].

9 13. On October 9, 2018, HOA filed its Motions for Summary Judgment for dismissal
10 of HSBC's pending claims against HOA. ("HOA MSJ"). [ECF No. 51].

11 14. Most recently, on January 2, 2019, the Court extended the stay of all proceedings
12 in this case to allow time for parties to complete settlement and file dismissal documents. [ECF
13 No. 62].

14 15. The undersigned Parties have, or will, execute a settlement agreement, the terms
15 of which are confidential, but under which HSBC agrees to forego any right, title and interest in
16 the Property and to disclaim its interest thereto for agreed-upon consideration paid by HOA and
17 Buyers;

18 16. HOA and Buyers disclaims any rights, claims or interest in the Excess Proceeds;

19 17. All other claims asserted by or against any of the undersigned Parties hereto shall
20 be dismissed with prejudice;

21 18. Nothing in this Stipulation should be construed as intended to benefit any other
22 party not identified as the undersigned Parties hereto, and in particular, shall not constitute a
23 waiver or relinquishment of any claims by HSBC against NAS or Borrower;

24 19. Pursuant to NRS 40.020, no Party may recover costs or attorney's fees against
25 the other as a result of this disclaimer of interest; and

26 20. Each Party shall bear its own fees and costs incurred in this litigation and
27 settlement.

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1 **IT IS HEREBY STIPULATED AND AGREED** that the above-referenced matter,
2 including all claims and defenses asserted by and/or against HSBC, HOA, and Buyers shall be
3 dismissed **with prejudice**.

4 **IT IS FURTHER STIPULATED AND AGREED** that the April 27, 2017 Lis Pendens
5 recorded against the Property as Instrument Number 201704270003677 is hereby withdrawn,
6 released or otherwise discharged.

7 **IT IS FURTHER STIPULATED AND AGREED** that nothing in this Stipulation and
8 Order is intended to be, or will be, construed as an admission of the claims or defenses of the
9 Parties.

10 **IT IS FURTHER STIPULATED AND AGREED** that this Stipulation and Order is in
11 no way intended to impair the rights of HSBC (or any of its authorized agents, investors,
12 affiliates, predecessors, successors, and assigns) to pursue any and all remedies against NAS as
13 to proceedings related to the HOA Sale or against the Borrower, as defined in the Note, that
14 HSBC (or any of its authorized servicers, agents, investors, affiliates, predecessors, successors,
15 and assigns) may have relating to the Note, including the right to sue the Borrower for any
16 deficiency.

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